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UNCLAS SECTION 01 OF 06 ANKARA 007003

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E.O. 12958: N/A
TAGS: ETRD EINV EFIN ECON KIPR TU
SUBJECT: DRAFT NATIONAL TRADE ESTIMATE REPORT

Ref: STATE 240980

The following is Embassy's input for the National Trade Estimate Report for Turkey:

TRADE SUMMARY

Turkey is a beneficiary of GSP, has Bilateral Investment and Tax Treaties with the United States, and has a customs union with the European Union. (Trade/investment statistics to be provided by Washington agencies).

IMPORT POLICIES

Tariffs and Quantitative Restrictions

As a result of its 1996 customs union with the European Union, Turkey applies the EU's common external customs tariff for third country (including U.S.) imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries. The simple average tariff for industrial products from the United States and other third countries was reduced significantly as a result of the customs union. Turkey's harmonization of trade and customs regulations with those of the EU and the overall decline in tariff rates benefits third country exporters.

Turkey maintains high tariff rates (25 percent average Most-Favored-Nation rate) on many food and agricultural products to protect domestic producers. The Turkish government often increases tariffs on grains during the domestic harvest. High feed prices have negatively impacted Turkish livestock industries, particularly for beef and poultry. Duties on fruits range from 61 percent to 149 percent. Processed fruits, fruit juices and vegetable tariffs range between 41 and 138 percent. The GOT also levies high duties as well as excise taxes and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

Import Licenses and Other Restrictions

While import licenses generally are not required for industrial products, products which need after-sales service (e.g., photocopiers, ADP equipment, diesel generators) require licenses. A non-transparent licensing system results in costly delays, demurrage charges, and other uncertainties that stifle trade for many agricultural products. For the past four years, the Ministry of Agriculture and Rural Affairs (MARA), through its quarantine service, stopped issuing import licenses for rice and corn prior to the harvest.

In concert with its licensing system, Turkey has recently implemented import quota programs for rice and corn. Import quotas, often dependent on procurement of domestic crops, tend to evolve throughout the marketing year, making it very difficult for commercial traders to plan their import programs, thus disrupting trade.

Turkey is in the process of rewriting its import regulations for agriculture products in order to comply with EU regulations. However, some new regulations have not been fully consistent with those of the EU. For many products, no written standards exist. For example, despite repeated requests, the GOT failed to provide guidelines for red meat and wine imports.
The government has privatized the alcohol operations of TEKEL (a parastatal company) and is in the process of privatizing TEKEL's tobacco operations. Recent changes in Turkish law call for a liberalization of the spirits and tobacco market over a five-year period, which should improve the competitive environment.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Turkish government has not consistently notified

the WTO of changes in import policies and phytosanitary requirements, and implementation has been arbitrary. Importers have had increasing difficulty in obtaining information on sanitary and phytosanitary certifications. The GOT often requires laboratory testing on items not normally subject to testing by trading partners, often without any scientific basis. Finally, the GOT often requires phytosanitary certification on quality issues that are normally handled on a contractual basis.

The government requires laboratory tests and certification that quality standards are met for the importation of foods, human and veterinary drugs, and medical equipment and appliances intended for use by humans.

U.S. CE-marked products, particularly medical devices, are often detained by Turkish customs authorities for inspection. In some cases, U.S. products are subject to additional tests, despite their CE marks, while EU CE-marked products gain immediate entry to the Turkish market.

GOVERNMENT PROCUREMENT

Turkey is not a signatory of the WTO Government Procurement Agreement. Although its laws require competitive bidding procedures for tenders, U.S. companies sometimes become frustrated over lengthy and often complicated bidding and negotiating processes.

In 2003, a new public tender law which establishes an independent board to oversee public tenders, and lowers the minimum bidding threshold at which foreign companies can participate in state tenders, entered into force. However, the law gives a price preference of up to 15 percent for domestic bidders and is not applicable to domestic bidders who form a joint venture with foreign bidders. Amendments to the law in 2003 enlarged the definition of domestic bidder to include corporate entities established under Turkish law, including those established by foreign companies.

Military procurement generally requires an offset provision in tender specifications. The offset guidelines were recently modified to encourage foreign direct investment and technology transfer.

The entry into force of a Bilateral Tax Treaty between the United States and Turkey in 1998 eliminated the application of a 15 percent withholding tax on U.S. bidders for Turkish government contracts.

EXPORT SUBSIDIES

Turkey employs a number of incentives to promote exports, although programs have been scaled back in recent years to comply with EU directives and WTO standards. In 2004, however, the Turkish Grain Board (TMO) has been selling domestic wheat to flour and pasta manufacturers against their exports of flour and pasta. This is an implicit subsidy as TMO is selling the manufacturers wheat at world prices, which are well below domestic prices. It is too early to quantify the size of this subsidy. Historically, wheat and sugar were the main subsidized commodities. Export subsidies, ranging from 10 to 20 percent of export values, are granted to 16 agricultural or processed agricultural products. The Turkish Eximbank provides exporters with credits, guarantees, and insurance programs. Certain tax credits also are available to exporters.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Turkey's intellectual property rights regime has improved in recent years, but still presents serious problems. Turkey was elevated from the Special 301 Watch List to the Priority Watch List in 2004, due to concerns about lack of pharmaceuticals data exclusivity protection and continued high levels of piracy and counterfeiting of copyright and trademark materials.

Turkey's 2001 copyright law substantially modernized the legal regime, providing deterrent penalties for copyright infringement. However, it does not prohibit circumvention of technical protection measures, a key feature of the World Intellectual Property Organization (WIPO) "Internet" treaties. In addition, the Turkish courts have failed to render deterrent penalties to pirates as provided in the copyright law. They have instead applied the Turkish Cinema Law, which has much lower penalties. Legislation enacted in March 2004 contains several strong anti-piracy provisions, including a ban on street sales of all copyright

products and authorization for law enforcement authorities to take action without a complaint by the rightholder. However, the law also reduces potential prison sentences in piracy convictions. U.S. industry estimated losses to piracy in 2003 at USD 50 million for motion pictures, USD 15 million for records/music and USD 25 million for books. There are signs that anti-piracy measures introduced in 2004 may be reducing these losses.

In 1995, new patent, trademark, industrial design, and geographic indicator laws revamped Turkey's foundation for industrial property protection. Turkey also acceded to a number of international conventions, including the Stockholm Act of the Paris Convention, the Patent Cooperation Treaty, and the Strasbourg Agreement. Although the Turkish Patent Institute (TPI) was established in 1994 to support technological progress, protect intellectual property rights and provide public information on intellectual property rights, it is currently understaffed.

In accordance with the 1995 patent law and Turkey's agreement with the EU, patent protection for pharmaceuticals began on January 1, 1999. Turkey has been accepting patent applications since 1996 in compliance with the TRIPS agreement "mailbox" provisions. The patent law does not, however, contain interim protection for pharmaceuticals in the R&D "pipeline."

Parliament amended the Patent Law in June 2004. The new law provides for penalties for infringement of up to 3 years or 47 billion TL (approximately USD 32,000) in fines, or both, and closure of the business for up to one year. However, some companies in the pharmaceuticals sector have criticized provisions which give judges wider discretion over penalties in infringement cases, delay the initiation of infringement suits until after the patent is approved and published, and permit use of a patented invention to generate data needed for the marketing approval of generic pharmaceutical products.

The Health Ministry has accepted applications to register generic copies of products which have a valid patent in Turkey; in the absence of a system for patent linkage, it may become possible for generics manufacturers to register a copy of a brand name drug with a valid Turkish patent, with enormous damage to the interests of the patent owner.

The key intellectual property concern for research-based pharmaceutical companies is Turkey's lack of data exclusivity protection for confidential test data. U.S. industry contends that numerous products infringing data exclusivity have been approved or are pending review by the Turkish Health Ministry.

Trademark holders also contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey, especially in apparel, pharmaceuticals, film, cosmetics, detergent and other products.

In 2004, Turkey published its first Plant Variety Protection (PVP) Law. A subsidiary of a major U.S. seed company, however, has been unable to obtain protection for its commercial seed under this new law, reportedly at great cost to the company.

SERVICES BARRIERS

Telecommunications Services

State-owned Turk Telecom currently provides voice telephony and most value-added and basic telecommunications services. In the WTO negotiations on Basic Telecommunications Services, Turkey made commitments to provide market access and national treatment for all services at the end of 2005, and permitted value-added telecommunications services to be licensed to the private sector with a 49 percent limit on foreign equity investment. In the interim, Turkey committed to provide national treatment for mobile, paging and private data networks. In 2000, the Turkish government passed a law unilaterally accelerating the opening of the market for basic telephone services to ¶2004. A 2001 law provides for liberalization of areas under the Turk Telecom monopoly once the state's share in that company falls below 50 percent. The Turkish government has not yet issued implementing regulations. These laws also created an independent regulatory body - the Telecommunications Regulatory Board - and made licensing criteria publicly available. U.S. firms complain that the licensing process still lacks transparency and that revenue sharing with Turk Telecom

is required where competition is permitted. There are three private GSM cellular operators in Turkey, with a fourth license held by Turk Telecom.

In November 2004, the Privatization Administration announced the tender for a block sale of 55 percent of Turk Telecom. Law 5189 of 2004 lifted the limit on foreign ownership of Turk Telekom.

Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector, broadcasting, aviation and maritime transportation (see Investment Barriers section). A 2003 law on work permits for foreigners repealed earlier legislation defining certain professions and services open only to Turkish citizens. This has significantly broadened the range of occupations in which foreigners can be engaged, but there are still restrictions for doctors, attorneys and several other professions.

INVESTMENT BARRIERS

The U.S.-Turkish Bilateral Investment Treaty (BIT) entered into force in May 1990. Turkey has a liberal investment regime in which foreign investments receive national treatment. However, private sector investment has often been hindered, regardless of nationality, by: excessive bureaucracy; political and macroeconomic uncertainty; weaknesses in the judicial system; high tax rates; a weak framework for corporate governance; and frequent changes in the legal and regulatory environment.

Almost all areas open to the Turkish private sector are fully open to foreign participation, but establishments in the financial and petroleum sectors require special permission. The equity participation ratio of foreign shareholders is restricted to 20 percent in broadcasting and 49 percent in aviation, maritime transportation and many value-added telecommunications services (such as GSM, satellite and data, though telecommunications legislation has been amended to allow certain company-specific exceptions to these limits). Nonetheless, once investors have committed to the Turkish market, they sometimes find the rationale for their initial investments significantly undercut by arbitrary legislative action, such as laws imposing limits on the production corn sweeteners.

The Turkish government accepts binding international arbitration of investment disputes between foreign investors and the state. I n 2001 the Parliament approved a law expanding the scope of international arbitration in Turkish contracts. However, at least one American company reports that the judicial system in Turkey has not recognized international arbitration judgments.

The Turkish government passed legislation in February 2001 that aims to introduce a fully liberalized energy market, under which private firms will develop projects with the approval of an independent regulatory body, the Energy Market Regulatory Authority. With respect to electricity, the state company has been unbundled into production, transmission, distribution, and trading companies, but little progress has been made in privatizing power generation and distribution. Targeted liberalization of the natural gas sector has also faced delays. The state pipeline company BOTAS will remain predominant, but legislation requires phased transfer of 80 percent of its gas purchase contracts. Privatization of natural gas distribution is slowly proceeding.

As the result of a 1997 court decision, the Turkish Government has blocked full repatriation of investments by oil companies under Article 116 of the 1954 Petroleum Law, which protected foreign investors from the impact of lira depreciation. Affected companies have challenged the 1997 decision and the case is currently in the Turkish court system.

ANTICOMPETITIVE PRACTICES

As part of its customs union agreement with the EU, Turkey has pledged to adopt EU standards concerning competition and consumer protection. In 1997, a government "Competition Board" commenced operations, putting into force a 1994 competition law. Government monopolies in a number of areas, particularly alcoholic beverages and telecommunications services, have been scaled back in recent years, but currently remain a barrier to certain U.S. products and services.

Corruption

Corruption is perceived to be a major problem in Turkey by private enterprise and the public at large, particularly in government procurement. The judicial system is also perceived to be susceptible to external influence and to be biased against outsiders to some degree. American companies operating in Turkey have complained about contributions to the community solicited, with varying degrees of pressure, by municipal or local authorities.

Parliament continues to probe corruption allegations involving senior officials in previous governments, particularly in connection with energy projects. In 2003, after the government intervention in a bank owned by the Uzan group, evidence of corrupt practices at the bank was discovered.

Turkey ratified the OECD antibribery convention, and passed implementing legislation providing that bribes of foreign officials, as well as domestic, are illegal and not tax deductible.

OTHER BARRIERS

Energy: In 2001, the Turkish Government cancelled 46 contracted power projects based on the build-operate-transfer (BOT) and transfer-of-operating-rights (TOR) models. Turkey's constitutional court ruled in 2002 that the government would have to either honor the contracts or compensate the companies involved. To date, the Turkish government has not commenced negotiations with the companies, one (TOR) of which has launched an international arbitration case. In 2002, the government requested BOT projects already in operation -- which include U.S.-owned companies -- to apply for new licenses from the new Energy Market Regulatory Authority (EMRA), and has indirectly pressed them unilaterally to lower their prices while the license application process is still underway. Despite lack of action on new licenses, the Turkish Government has continued to purchase electricity produced per the existing contracts.

Cola tax: Punitive taxation of cola drinks (raised in 2002 to 47.5 percent under Turkey's "Special Consumption Tax") discourages investment by major U.S. cola producers.

Corporate Governance: Weaknesses in the protection of minority shareholder rights and regulatory oversight have left some American companies at a disadvantage in disputes with Turkish partners.
Edelman